

RELIANCE DOTCOM LTD. vs. INCOME TAX OFFICER

IN THE ITAT DELHI BENCH 'F'

R. K. PANDA, AM & SUCHITRA KAMBLE, JM.

ITA No. 3554/Del./2018

Jul 26, 2021

(2021) 62 CCH 0358 DelTrib

Legislation Referred to

Section 68, 143(1)

Case pertains to

Asst. Year 2013-2014

Counsel appeared:

Sushma Singh for the Revenue

R. K. PANDA, AM.

1. This appeal filed by the Assessee is directed against the Order dated 02.01.2018 of the Ld. CIT(A)-7, New Delhi, relevant to the A.Y. 2013-2014.

2. The facts of the case, in brief are that the assessee company filed its return of income on 31.03.2015 declaring total income of Rs.23,36,930/- which was processed under section 143(1) of the I.T. Act, 1961. Subsequently, the case was selected for scrutiny under CASS. Notice under section 143(2) of the I.T. Act, 1961 was issued to the assessee on 28.08.2015 which was duly served upon the assessee. Subsequently, other notices were also issued from time to time along with the questionnaire on 14.12.2015. Since the assessee was non-cooperative in furnishing even basic details like audit report, Profit & Loss A/c, balance-sheet and copy of return of income etc., a letter written to Registrar of Companies on 01.02.2016 to furnish audit report etc., and present communication address, contact number etc., of the assessee company. The Registrar of Companies vide letter dated 03.03.2016 submitted the details. Subsequently, the A.R. of the Assessee appeared before the A.O. from 09.03.2016 onwards and furnished part details and that too in peace-meal at the very fag end of the time barring assessment proceedings. The A.O, therefore, inferred that assessee has no interest in completing the assessment. In spite of numerous opportunities afforded to the assessee, the assessee failed to produce complete details of books of account with bills and vouchers etc., The A.O, thereafter proceeded to complete the assessment on the basis of the oral and written submissions made by the assessee from time to time and determined the total income of the assessee at Rs.95,60,17,270/- wherein he made the following additions :

A.	Disallowance under section 14A read with Rule 8D	Rs. 2,77,875/-
B.	Addition on account of sundry creditors	Rs.95,19,83,100/-
C.	Addition of expenses on account of non-production of books	Rs. 14,19,364/-

2.1. Since the assessee did not appear before the Ld. CIT(A) despite number of opportunities granted, the Ld. CIT(A) dismissed the appeal filed by the assessee by observing as under :

3.1. The appellant has just not bothered to file any written submissions of explanations in respect of grounds of appeal taken. It is pertinent to invoke the doctrine of vigilantibus non dormientibus wherein it is ordained so-

- Law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim one's right, s/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law.*
- A person who has kept mum during the statutory period cannot claim for the enforcement of right after the statutory limitation."*

3. Aggrieved with such order of the Ld. CIT(A), the assessee preferred the appeal before the Tribunal by raising the following grounds :

1) Action of Commissioner of Income Tax Appeal -7 in passing ex-parte order without giving opportunity of being heard is unjust, illegal arbitrary and against the facts and circumstances of the case.

2) Action of the CITA in confirming the addition made by the A.O in making disallowance U/s 14A by applying rule 8D of I.T. Act of Rs 2,77,875/- is unjust, illegal arbitrary and against the facts and circumstances of the case.

3) Action of the CITA in confirming the addition made by the A.O U/S 68 of I T Act on Sundry Creditors amounting to Rs.95,19,83,100/- is unjust, illegal arbitrary and against the facts and circumstances of the case.

4) Action of the CITA in confirming the addition made by the A.O in making disallowance of 40% of Expenses (i.e 40% of Other Expenses amounting to Rs 35,48,411 = 14,19,364/-)without considering the material on record is unjust, illegal arbitrary and against the facts and circumstances of the case.

4. Despite issue of notice by the Registry, none appeared on behalf of the assessee. Therefore, this appeal is being decided on the basis of the material available on record and after hearing the Ld. D.R.

5. We have heard the Ld. D.R. and perused the record.

6. It is an admitted fact that due to non-submission of details to the satisfaction of the A.O, he has determined the total income of the assessee at Rs.95,60,17,270/- wherein he made addition of Rs.95,36,80,339/-, the details of which have already been given in the preceding paragraph. We find the Ld. CIT(A) passed the ex-parte order dismissing the appeal of the assessee for non-appearance. However, he has not decided the appeal on merit which he is required to do as per the provisions of Section 250(6) of the I.T. Act, 1961 which reads as under :

"The order of the Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

6.1. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and Law. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate its case without seeking any adjournment under any pretext, failing which, the Ld. CIT(A) is at liberty to pass appropriate orders as per Law. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court at the time of virtual hearing i.e., on 26.07.2021 .

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